140-106

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 307.

ELLIS G. HUGHES, PLAINTIFF IN ERROR,

vs.

THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY (LIMITED).

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED NOVEMBER 28, 1887.

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1 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

To the Dundee Mortgage and Trust Investment Company, Limited, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October, A. D. eighteen hundred and eighty-seven, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Oregon, wherein Ellis G. Hughes — plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this Dec. 28th, 1886.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

[Stamped:] Filed Dec. 28, 1886. R. H. Lamson, clerk.

DISTRICT OF OREGON, ss:

I certify that on the 28th day of December, 1886, at Portland, Multnomah county, in said district, I duly served the within citation on writ of error upon the therein-named Dundee Mortgage and Trust Investment Company, Limited, by delivering to Hugh Roger, agent of said company, personally a true copy of said citation on writ of error, duly certified to by me as U. S. marshal for said district.

PENUMBRA KELLY,
United States Marshal,
By ED. D. CURTIS, *Deputy.*

[Endorsed:] No. 1066. U. S. circuit court, district of Oregon. Hughes *vs.* D. M. & T. I. Co. Citation on writ of error. Filed Dec. 28, 1886. R. H. Lamson, clerk.

2 In the Supreme Court of the United States.

ELLIS G. HUGHES
vs. } No. 1066.
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } Writ of Error.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the circuit court of the United States for the district of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition

of a judgment of a plea which is in the said circuit court, before the Honorable Matthew P. Deady, one of you, between Ellis G. Hughes, plaintiff and plaintiff in error, and The Dundee Mortgage and Trust Investment Company, Limited, defendant and defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by complaint doth appear, and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. eighteen hundred and eighty-seven, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this December 28, 1886.

[Seal United States Circuit Court, Oregon.]

R. H. LAMSON,
Clerk of the Circuit Court of the United States for the District of Oregon,
By R. B. LAMSON,
Deputy Clerk.

[Endorsed:] No. 1066. In the Supreme Court of the United States. Ellis G. Hughes *vs.* The Dundee Mortgage and Trust Investment Company, Limited. Writ of error. Filed Dec. 28, 1886. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

3 [Endorsed:] No. 1066. In the Supreme Court of the United States. Ellis G. Hughes *vs.* The Dundee Mortgage and Trust Investment Company, Limited. Writ of error.

(Endorsed:) Filed Dec. 28, 1886. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

4 In the Circuit Court of the United States for the District of Oregon. April Term, 1884.

Be it remembered that on the 5th day of September, 1884, there was duly filed in the circuit court of the United States for the district of Oregon a complaint in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
vs.
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited.

Comes now the plaintiff and for cause of this his complaint against the defendant alleges—

That the plaintiff is a citizen and resident of the State of Oregon.

That the defendant, The Dundee Mortgage and Trust Investment Company, Limited, is a corporation duly organized and incorporated under the laws of the United Kingdom of Great Britain and Ireland and having its principal office and place of business in Dundee, Scotland; that it is at this time lawfully carrying on business in the State of Oregon, and that William H. Effinger, a citizen of the State of Oregon and of the United States, is at this time the duly appointed and acting attorney-in-fact of said corporation, on whom service of summons may be made in all actions and suits against it in the courts of the State of Oregon or the courts of the United States within said State of Oregon.

That the Oregon and Washington Mortgage Savings Bank, Limited, was continuously from the month of August, 1876, to the first day of January, 1882 (and for a time subsequent to the latter date), a corporation duly organized and incorporated under the laws of the United Kingdom of Great Britain and Ireland, and during all of said period was lawfully engaged in carrying on business
6 in the State of Oregon and Territory of Washington through an office or agency in the city of Portland, in said State of Oregon.

That the business enterprise and object of the said Oregon and Washington Mortgage Savings Bank, Limited, and in which it was engaged during the period aforesaid was, among other things, the lending of money in the State of Oregon and Territory of Washington on the security of mortgage liens on real estate situate in said State and Territory.

That during all of the period aforesaid the plaintiff was an attorney-at-law, duly admitted and practising and having his office and place of business in the city of Portland, in the State of Oregon.

That during the said period the plaintiff did, at the special instance and request of the said Oregon and Washington Mortgage Savings Bank, Limited, and for its use, benefit, and behoof, make and issue to it in writing and under his hand his certain three hundred and forty-seven separate certificates of title, which were issued as upon a like number of loans made by said bank, a separate certificate being issued upon each of said loans, and wherein and whereby he did, to the extent specified in each of said certificates and in accordance with the legal effect thereof, become responsible to said bank; that the title to the real estate on which it took mortgage liens to secure the repayment of its loans was absolute in fee simple in the party or parties making the mortgage thereon in favor

of said bank and free from all manner of liens or incumbrances, and that the mortgage made in favor of said bank was the first lien thereon.

That the said Oregon and Washington Mortgage Savings Bank, Limited, undertook and agreed to pay the plaintiff the rea-
7 sonable value of the service rendered and responsibility assumed by him to it in issuing to it the certificates of title aforesaid, and that said service and responsibility were of the reasonable value of one per cent. on the amount of each loan, respectively, covered by each separate certificate of title.

That the aggregate amount of the 347 loans on and as for which the plaintiff issued a like number of certificates of title, as hereinbefore set out, was the sum of $565,103.59, and the reasonable value of issuing said 347 certificates of title as aforesaid was and is the sum of $5,651.03, and that by reason of the issuing the 347 certificates of title as aforesaid the said Oregon and Washington Mortgage Savings Bank, Limited, became and was on the 1st day of January, 1882, indebted to the plaintiff in the said sum of $5,651.03.

That on the first day of August, 1882, the said Oregon and Washington Mortgage Savings Bank, Limited, amalgamated with and assigned, set over, and conveyed all and every of its property and assets to the defendant herein, and in consideration thereof the said defendant did assume and agree to pay all and every of the debts and liabilities of the said Oregon and Washington Mortgage Savings Bank, Limited, and did therein and thereby assume and agree to pay the aforesaid debt of said bank to this plaintiff.

That at the time of said amalgamation there was due the plaintiff from said bank, as for principal of and interest on said sum of $5,651.03, the sum of $5,914.72, which is the sum assumed and at that time agreed to be paid by the defendant as aforesaid.

That neither the said Oregon and Washington Mortgage Savings Bank, Limited, or the defendant have ever paid to the plaintiff the said sum of $5,914.72 or any part or parcel thereof, but
8–56 that sum and the whole thereof is now justly due and owing from the defendant to the plaintiff and has been so due and owing since the said first day of August, 1882, and the plaintiff is entitled to have and recover said sum of and from the defendant, with interest thereon as allowed by law from the said first day of August, 1882.

That at this date, to wit, the 5th day of September, 1884, there is justly due and owing from the defendant to the plaintiff, as for principal of and interest on said sum of $5,914.72, the sum of $6,907.07.

Wherefore the plaintiff prays judgment against the defendant for the sum of $6,907.07, with lawful interest thereon from the 5th day of September, 1884, and for his costs and disbursements.

GEO. H. WILLIAMS AND
C. B. BELLINGER,
Att'ys for Pl'ff.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Ellis G. Hughes, being duly sworn, on oath do say that I am the plaintiff in the foregoing-entitled action; that I have read the foregoing complaint and know the contents thereof, and that the same is true as I verily believe.

ELLIS G. HUGHES.

Subscribed and sworn to before me this 5th day of September, A. D. 1884.

[SEAL.] J. R. STODDARD,
Notary Public in & for Or.

Endorsed: Filed September 5, 1884. R. H. Lamson, clerk.

57 * * * * * * *

And afterwards, to wit, on the 11th day of July, 1885, there was duly filed in said court a second amended answer in words and figures as follows, to wit:

58 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES, Plaintiff,
vs.
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited, Defendant. } Action at Law. No. 1066.

Defendant, for second amended answer herein, by leave of the court, says that it is not true that during the period named in the complaint or during any portion thereof or at any other time the plaintiff did, at the instance or request of the Oregon and Washington Mortgage Savings Bank, Limited, named in the complaint, make or issue to said bank any of the certificates of title named in the complaint.

And it is not true that said Oregon and Washington Mortgage Savings Bank, Limited, undertook or agreed to pay the plaintiff the reasonable value of said alleged service or said responsibility assumed by plaintiff to said bank in issuing to said bank the said certificates of title or any of them, or that said bank undertook or agreed to pay for such service or responsibility any sum or value whatever, or that said alleged service or responsibility was of the reasonable value of one per cent. on the amount of each loan, respectively, covered by each separate certificate of title, or any other sum or value whatever to said bank or to this defendant or to any one; and it is not true that the reasonable value of making or issuing said three hundred and forty-seven certificates of title was or is the sum of $5,651.03 or any other sum whatever, or that by reason of the issuance of said three hundred forty-seven certificates

of title as aforesaid or any of them the said bank became
59 or was on the 1st day of January, 1883, or at any other time indebted to the plaintiff in the said sum of $5,651.03 or in any other sum whatever.

And defendant says that it is not true that this defendant, in consideration of any amalgamation of said Oregon and Washington Mortgage Savings Bank with this defendant or any assignment of the property or assets or any portion thereof of said bank to this defendant or for any other consideration or otherwise, did assume or agree to pay any liability of said bank to said plaintiff or any portion thereof; and defendant says that it is not true that at the time of said amalgamation or at any other time there was due the plaintiff from said bank, as for principal or interest or principal and interest on said alleged sum of $5,651.03, the sum of $5,914.50 or any other sum whatever, or that said sum or any other sum was the sum to be paid or agreed to be paid by defendant as aforesaid or at all.

And defendant says that it is not true that said sum or any other sum now is or ever was due or owing from defendant to plaintiff, or that it has been so due or owing from the 1st day of August, 1882, or from any other time, or that plaintiff is entitled to have or recover said or any sum from this defendant, with interest as allowed by law or at any other rate or without interest from the first day of August, 1882, or from any other time or otherwise howsoever; and defendant says that it is not true that at the time named in the complaint, to wit, September 5th, 1884, or at any other time there was due or owing from this defendant to the plaintiff, as or for principal or interest on said sum of $5,914.72 or on any sum whatever, the sum of $6,907.07 or any other sum whatever.

And for further ans separate answer and defense to this
60 action the defendant alleges that the plaintiff ought not to have or maintain this action, because that at the time of said amalgamation of said Oregon and Washington Mortgage Savings Bank, Limited, with the defendant herein the said plaintiff was the general attorney for the defendant, and prior thereto and as such attorney plaintiff did advise defendant in regard to the making and effecting said amalgamation with said bank and the assumption by this defendant of the debts of said bank, and that prior to and at the time of said amalgamation plaintiff well knew that this defendant and its officers and agents supposed and believed that they had entered into no contract with plaintiff, either expressed or implied, to pay for any such certificates of title as are described in the complaint or any certificates of title whatever, and they did not know that plaintiff claimed any indebtedness against said bank for the making or issuing said certificates of title or any of them, and that they supposed and believed that all services rendered by the plaintiff in making and issuing said certificates of title and the responsibility therein and thereby assumed by the plaintiff had been fully paid for by the respective borrowers of the various loans for which each separate certificate was issued, but that the plaintiff, in order to induce defendant to enter into said amalgamation and to contract

to pay the debts and obligations of said bank, did in fraud
61 of defendant's rights omit and fail to state or disclose to defendant or its officers or agents that he had any claim whatever against said bank, and that thereupon defendant, induced as aforesaid by the said wrongful omission of plaintiff to *sid*close his said claim, and believing him to have no claim against said bank, and being misled and induced thereby, did enter into and make said amalgamation with said bank and agree to pay its outstanding liabilities, and that defendant would not have entered into said agreement if it had been known or supposed that said bank was indebted to plaintiff as by him claimed or in any sum, and that said plaintiff should be and is estopped to claim any of said alleged indebtedness as against this defendant.

And for further separate answer and defense to the cause of action set forth in said complaint defendant alleges that said Oregon and Washington Mortgage Savings Bank, during the period named in said complaint, being engaged in the State of Oregon and in Washington Territory in the loaning of money for interest, taking as security therefor and for the repayment thereof, principal and interest, first-mortgage liens on real estate situated in said State and Territory, did agree with the plaintiff as follows: That said bank being able to control a large and profitable business in the certification of titles submitted to — as mortgage securities for loans, said plaintiff, in consideration of being appointed attorney for said bank with the right to charge fees to borrowers on a scale of fees to be fixed by said bank, undertook, among other things, to issue his certificates
62 of title to said bank, guaranteeing the — to such real estate to be in fee simple and unencumbered in the borrower, and that the mortgage lien to be taken by said bank was the first lien and incumbrance in such real estate, and that his remuneration for such services and responsibility should be the fees so charged to and received from said borrowers as aforesaid, and that he should make no charge against said bank for the making or issuing of any of said certificates of title, but should look solely to the fees from said borrowers for his remuneration; and defendant alleges that all of said certificates of title mentioned in the complaint were made and issued under and in pursuance of the aforesaid agreement and at the instance and request of the respective borrowers, and were accepted by said bank on the aforesaid condition that said bank should incur no liability to plaintiff therefor, but that all compensation for such service and liability therefor should be bourne by said respective borrowers.

And for further separate answer and defense to the cause of action set forth in the complaint defendant alleges that during the period named in the complaint it was the established rule and practice of the said Oregon and Washington Mortgage Savings Bank, Limited, named in the complaint, which said bank was then engaged in the State of Oregon and Territory of Washington in loaning of money for interest, taking as security for its repayment first-mortgage liens on real estate situated in said State or Territory, to make no loan except on a title warranted and certified to by a qualified attorney

of the supreme court of the said State of Oregon to be in fee
63 simple and unencumbered, and that said bank, during the period named in the complaint, required each borrower to procure the certificate of the plaintiff, warranting and certifying his said title as aforesaid, and that such borrower pay to plaintiff the fees fixed by said bank, in each case or loan, as attorney's fees payable by borrower; in consideration whereof, and as an inducement to said bank to make the loan in each case referred to, the plaintiff agreed to and did issue said certificates of title described in the complaint accordingly, and the plaintiff received the fees so fixed as aforesaid therefor.

And for further and separate answer to the said complaint defendant alleges that each of said three hundred forty-seven loans so made by the said Oregon and Washington Mortgage Savings Bank, Limited, was a separate and distinct transaction and had no relation or connection with any other loan, and that the making and issuing of each of said three hundred forty-seven certificates of title was a separate and distinct service, and that of the loans made and described in the complaint the sum of $87,723.59 was made more than six years before the commencement of this action, and that the certificates of title for said sum were made and issued more than six years prior to the commencement of this action, and that the alleged causes of action for the reasonable value for issueing certificates of title for said sum, to wit, the sum of $877.23, accrued more than six years prior to the commencement of this action.

64 And for further and separate answer and defense to said complaint defendant alleges that plaintiff ought not to have or maintain this action, because that, on the 12th day of February, A. D. 1883, the said plaintiff commenced an action at law against this defendant in this honorable court, in his complaint in which action plaintiff stated and alleged that in August 1st, 1876, the Oregon and Washington Mortgage Savings Bank, Limited, appointed plaintiff to be its attorney, and that said bank became indebted to him, plaintiff, in the sum of $5,500.00 for services rendered to it by plaintiff as such attorney between July 1st, 1876, and January 1st, 1882, in counselling and advising said bank and other acts and attendances in and about its business at its request and for money paid out by plaintiff in and about the said business; that plaintiff did further allege in said complaint that about June 30, 1882, said bank amalgamated with defendant, and that defendant assumed to pay the debts and liabilities of said bank, including its indebtedness to plaintiff; that plaintiff did further allege in said complaint that said Oregon and Washington Trust Investment Company, Limited, did, about January 1, 1876, appoint plaintiff to be its attorney to attend to its business in Oregon and Washington Territory, and that in pursuance of such appointment plaintiff did, between January 1, 1876, and January 1, 1880, render service to said last-named corporation in counselling and advising it about its business and other acts and attendances in and about the said business, at its request, of the value of $2,500 per annum, and

that about January, 1880, said Oregon and Washington Trust
65 Investment Company, Limited, amalgamated with defendant, and that defendant assumed to pay its debts and liabilities, including its indebtedness to plaintiff, and that thereafter plaintiff rendered service to defendant as its attorney and paid out money for it up to January 1, 1882, the value of which service and amount of which money combined aggregated $2,500; that it was also alleged in said complaint in said action that defendant was then indebted to plaintiff as its attorney in the sum of $224.80 for services in foreclosing a certain mortgage executed by one Elkins and fully described in said complaint, and in the further sum of $531.00 for services rendered by plaintiff as such attorney to defendant in a certain suit in which one William Reid was the plaintiff and Joseph Hill and others were the defendants, and that the aggregate of defendant's indebtedness to plaintiff upon said several accounts mentioned in said complaint was the sum of $21,255.80, for which amount judgment was in and by said complaint prayed in favor of the plaintiff and against the defendant; that defendant appeared and made defense to said action, and that such further proceedings were therein had that upon the trial of the issues therein joined the judgment of this court was on August 15, 1884, rendered in favor of the plaintiff and against the defendant for the sum of $8,407.60, beside the sum of $390.05 for costs and disbursements, which judgment remains and is still in full force and effect and in nowise reversed or annulled; and defendant alleges that all the service alleged in the complaint in this present action to have been performed by plaintiff
is claimed by him to have been rendered before the
66–96 commencement of said former action, and that whatever sum of money may be due or owing to plaintiff for such service was due and owing prior to the commencement of said former action, and that all of said service rendered by plaintiff to said Oregon and Washington Mortgage Savings Bank, Limited, as alleged in the complaint in this action, was performed under and by virtue of the appointment of plaintiff as its attorney, as mentioned in said complaint in said former action, and all of the service claimed by plaintiff in his complaint in this action to have been performed under and by virtue of the appointment of plaintiff to be defendant's attorney, as specified in said complaint in said former action; wherefore defendant alleges that plaintiff is by said former judgment forever barred and estopped from recovery herein and ought to have or maintain this action.

Wherefore defendant prays judgment against plaintiff for the costs and disbursements of this action.

WHALLEY, BRONAUGH,
NORTHUP & DEADY,
Attorneys for Defendant.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Hugh Roger, being duly sworn, say on oath that I am the

managing agent, in the State and district of Oregon, for the Dundee Mortgage and Trust Investment Company, Limited, the corporation defendant in the above-entitled action, whose answer the foregoing is, and that said answer is true as I verily believe, and that I make this verification because neither the defendant nor any of its officers qualified to make the same are now in said State or district.

HUGH ROGER.

Subscribed and sworn to before me this 11th day of July, A. D. 1885.

U. S. GRANT MARQUAM,
Notary Public for Oregon. [SEAL.]

Endorsed: Filed July 11, 1885. R. H. Lamson, clerk.

97 * * * * * * *

And afterwards, to wit, on the 15th day of April, 1886, there was duly filed in said court a reply in words and figures as follows, to wit:

98 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
vs.
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1066.

Comes now the plaintiff, and for his reply to the second amended answer of the defendant herein filed alleges:

For his reply to the first separate and further defense in said answer contained he alleges—

That it is not true, and he denied, that at the time of the amalgamation of said Oregon and Washington Mortgage Savings Bank, Limited, with the defendant that he was the general or any attorney for the defendant, save only as he might then have been representing it as its attorney in some cases then pending in court, with employment for those cases only, or that he was in any manner of way, save as aforesaid, connected with defendant as its attorney or otherwise, or that he did advise the defendant in any way in regard to the making or effecting said amalgamation with said bank or the assumption by defendant of the debts of said bank, or that prior to or at the time of said amalgamation or at any other time he well or at all knew that the defendant or its officers or agents supposed or believed that they had entered into no contract with him, either express or implied, to pay for any such certificates of title as described in the complaint or any certificates of title whatever, or that they did not know that plaintiff claimed any indebtedness against said bank for the making or issuing of said certificates of title or any of them, or that they sup-
99 posed or believed that all or any service rendered by plaintiff in making or issuing said certificates of title or the responsi-

bility therein or thereby assumed by the plaintiff had been fully or at all paid for by the respective borrowers of the various loans on which said certificates were issued, or that he, either in order to induce the defendant to enter into said amalgamation or to contract to pay the obligations and debts of said bank or in fraud of defendant's rights or at all, did omit or fail to state or disclose to the defendant or its officers or agents that he had any claim against said bank, or that the defendant was induced to enter into said amalgamation by any wrongful omission of plaintiff of any kind, or that by reason of any omission on his part the defendant believed him to have no claim against said bank or was induced to or did enter into the amalgamation with said bank and agree to pay its indebtedness; and as thereto he alleges the truth to be that he was in no manner of any way connected with the defendant *at* its attorney, save it may be in some special cases pending in court, after the month of January, 1882, and that he had no notice or knowledge or knew that the said amalgamation with said bank was either contemplated or made until long after the same had been fully made and completed, and that it is not true, and he denied, that the defendant would not have entered into said amalgamation had it known of the indebtedness of said bank to the plaintiff, the fact as thereto being that the assets of said bank greatly exceeded its liabilities, including the liability to plaintiff, and it is not true, and he denied, that he is estopped to claim said indebtedness as against the defendant.

And for his reply to the separate defense in said answer set out he alleges—

100 That it is not true, and he denied, that the said Oregon and Washington Mortgage Savings Bank did ever at any time agree with him that said bank being able to control a large or profitable business in the certification of titles submitted to it as mortgage securities for loans, that he, the plaintiff, in consideration of being appointed the attorney of said bank with a right to charge fees to borrowers on a scale of fees to be fixed by said bank, undertook, among other things or at all, to issue his certificates of title to said bank guaranteeing the titles to real estate, as alleged in said answer, on the terms that his remuneration therefor should be the fees charged to and received from borrowers, as alleged, or on any other terms or for any other consideration than that the said bank should pay to him the reasonable value of issuing said certificates of title to it, as alleged in his complaint herein, and that it is not true, and he denies, that he ever agreed with said bank not to make any charge against it for making or issuing any of said certificates of title, or that he should look to borrowers for his remuneration therefor, or that said certificates of title were made or issued under any such agreement or any other agreement other than that alleged in the complaint herein, or that they were made or issued at the instance or request of the respective borrowers, or that they were accepted by said bank on any condition that it should assume no liability to plaintiff therefor, or that all or any compensation therefor should be borne by the respective borrowers.

And for his reply to the third separate defense in said answer set out he alleges—

That it is not true, and he denies, that the said Oregon and Washington Mortgage Savings Bank, during the period mentioned
101 in the complaint, did require each borrower or any borrower to procure the certificate of the plaintiff either to and of the effect set out in the answer or at all, or that each or any borrower pay the plaintiff the fees fixed by said bank or any fees as for the issuing of said certificates, or that the plaintiff, as for or in consideration of any fees paid by borrowers, either as an inducement to said bank to make loans to borrowers or at all, except on the terms set out and alleged in the complaint herein, did agree to or did issue his certificates of title as alleged, or that he ever received any fees from borrowers therefor.

And for hsi reply to the fourth separate defense in said answer set out he alleges—

That it is not true, and he denies, that the making or issuing of each or any of said three hundred and forty-seven certificates of title was a separate or a distinct service as between the plaintiff and the said Oregon and Washington Mortgage Savings Bank, Limited, but as thereto the truth is and the facts are that each and every one of the said certificates of title were by the plaintiff made and issued and delivered to said bank, and the responsibility therein and thereby assumed by the plaintiff to said bank was assumed and incurred by him under and by virtue of one and the same continuous, unbroken, and entire contract of employment of the plaintiff by said bank to frim time to time, as it should make loans, issue to it for its use and benefit the said certificates of title, which cintract did not terminate until the year 1881, and that it is not true that the cause of action as for the sum of $877.23 or any other sum accrued more than six years prior to the commencement of this action in any sense so as that in law or in fact this action is to said or any sum barred by the statute of limitations.

102 And for his reply to the fifth separate defense in said answer set out he alleges—

That though it is true that he brought the action alleged in said answer and in said separate defense, that it is not true, and he denies, that said judgment is at this time in full or any force or effect as a bar or estoppel in this action or as being collectable or sibject to being enforced, but that the force and effect of said judgment is at this time suspended so as that it is without force; and that it is not true, and he denies, that all or any of the services alleged to have been rendered by him and constituting the cause of action in this action were rendered under or by virtue of the appointment of the plaintiff as the attorney of the Oregon and Washington Mortgage Savings Bank, Limited, mentioned in said former action, so as that they were or formed any part or parcel of the cause of action set out or sued for in said former action, or so as that they could be in any manner of way joined with the said service sued for in said former action as being or forming or constituting in any manner of way one cause of action then existing in favor of the plaintiff and against

the defendant, but that in truth and in fact the service sued for in said former action and those sued for in this action were rendered under and by virtue of contracts separate in fact and in law as to performance and consideration and forming and being two separate and distinct causes of action; and that it is not true, and he denies, that he is by the said judgment rendered in said former action in any manner of way barred or estopped from recovering herein or from having or maintaining this action.

And by way of a separate and further reply to said fifth separate defense in the answer set out he alleges—

103 That while it is true that he brought the action alleged, and that he recovered a judgment therein against the defendant, as alleged, that the said judgment was not at the commencement of this action nor has it at any time since been nor is it now any bar to the maintenance of this action, nor is he thereby barred or estopped from having or maintaining this action or from recovering herein, for that within ten days from and after the rendering of said judgment in said former action and prior to the commencement of this action the defendant therein and herein, claiming and alleging that the said judgment so in said former action rendered — in manner as by law and the rules of court in that behalf existing is provided to be done, took a writ of error in said cause to the Supreme Court of the United States, and thereby took and removed the said cause into the Supreme Court of the United States as for and to obtain a reversal of said judgment and to be there heard and determined as in such cases is provided to be done, and did, on the taking of said writ of error and within ten days from the rendition of said judgment as aforesaid, make and file its supersedeas bond, with approved security, in manner as is by law in such cases provided to be done, for the superseding of a judgment in this court rendered on the removal of the cause in which it was rendered by writ of error to the Supreme Court of the United States, and that the said cause has never been determined in the Supreme Court of the United States nor has said writ of error ever been dismissed, but the said cause is now pending in said Supreme Court as for trial therein, and the said supersedeas bond so as aforesaid given has never been withdrawn or set aside, but the supersedeas of said judgment, by the provisions of law and the rules of court in that behalf existing, thereby created has been ever since the giving of

104 said bond and is now in full force and effect, and by reason of the matters and things aforesaid there has not been at any time since the commencement of this action nor is there now any final judgment in said former action in full and final determination of the same, but said former action was at the bringing of this action, ever since has been, and is not still pending, with no final judgment entered therein, and the said judgment entered in this court therein, as alleged in defendant's answer, is not the final judgment in said former action, but said action now stands as for further proceedings therein and with final judgment yet to be entered therein, nor was said judgment of this court in said former action rendered as aforesaid at the time of the bringing of this action nor

has it at any time since been nor is it now of any force or effect to bar or estop the plaintiff from having or maintaining this action or from recovering herein.

And by way of a second separate and further reply to the said fifth separate defense in said answer set out he alleges—

That it is true that he brought the action alleged, and that he recovered judgment therein against the defendant herein as alleged; but that within ten days after the rendition of said judgment in said former action and prior to the commencement of this action the said defendant, claiming and alleging that the judgment so as aforesaid rendered in said former action was erroneous and contrary to law and should be reversed in manner as by law and the rules of court in that behalf existing — provided to be done, took said cause by writ of error therein to the Supreme Court of the United States, and gave therein the necessary bond or undertaking for the superseding of the judgment therein rendered, and thereby
105 removed said cause into the Supreme Court of the United States as for and to obtain a reversal of said judgment, in which court the said former action has ever since the commencement of this action been and is now pending as on account of and by reason of the said allegations and claim of defendant that there is error in said judgment and that the same should be reversed, and the defendant has ever since the commencement of this action been and is now seeking to have said judgment reversed as erroneous and contrary to law, by reason of which said action on the part of the defendant it is estopped from claiming any rights or benefits under said judgment and from alleging that said judgment is a final judgment in said former action in bar of or as an estoppel to the recovery of the plaintiff in this action.

And by way of a third separate and further reply to the fifth separate defense in the answer set out he alleges—

That at the time of the bringing of said former action and of the trial thereof he did not know that he had the claim against the defendant which is and constitutes his cause of action in this action, nor was he advised of nor did he know that the cause of action which is his cause of action against the defendant in this action existed in his favor and against the defendant until the issues had been joined in and said former action was tried.

Wherefore he prays judgment against the defendant in accordance with the prayer of his complaint.

GEO. H. WILLIAMS,
C. B. BELLINGER, AND
ELLIS G. HUGHES,
Att'ys for Pl'ff.

106–132 UNITED STATES OF AMERICA, } 88:
District and State of Oregon, Multnomah County, }

I, Ellis G. Hughes, being duly sworn, on oath do say that I am the plaintiff in the foregoing cause; that I have read the foregoing reply and know the contents thereof, and that the same is true as I verily believe.

ELLIS G. HUGHES.

Subscribed and sworn to before me this 14th day of April, A. D. 1886.

[SEAL.] HENRY WAGNER,
Notary Public in & for Oregon.

Due service of the within "reply" is hereby accepted, at Portland, Oregon, this 15th day of April, A. D. 1886, by receiving a copy thereof, duly certified to.

H. H. NORTHUP,
Of Attorneys for Def't.

Endorsed: Filed April 15, 1886. R. H. Lamson, clerk.

133 * * * * * * *

And afterwards, to wit, on Thursday, the 9th day of December, 1886, the same being the 48th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

134–140 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
vs.
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1066.

DECEMBER 9, 1886.

Now, at this day, comes the defendant, by Mr. John W. Whalley, of counsel, and moves the court for judgment upon the verdict heretofore found herein; and it appearing that the jury in and by said verdict found that the defendant was not indebted to the plaintiff for or on account of the matters alleged in his complaint, therefore it is considered that said defendant go hence without day, and that it have and recover of and from the plaintiff herein its costs and disbursements, taxed at sixty and $\frac{36}{100}$ dollars.

141 * * * * * * *

And afterwards, to wit, on the 28th day of February, 1887, there was duly filed in said court a bill of exceptions in words and figures as follows, to wit:

142 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
vs.
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1066.

On the trial of this cause the plaintiff offered in evidence a resolution of the board of directors of the Oregon and Washington

Trust Investment Company, Limited, of date December 17th, 1875, in terms following:

"Attorneyship.—The directors, having in view the recommendation of the local board, resolved, and hereby resolve, to appoint Mr. Ellis G. Hughes as the legal agent of the company, this appointment to subsist during the pleasure of the Dundee board."

And a letter of the secretary of the same company, of date December 18th, 1875, with which said resolution was transmitted to plaintiff, in terms following:

"DUNDEE, 18 *Dec.*, 1875.

"Mr. Ellis G. Hughes, Esq., attorney, Portland, Oregon.

"DEAR SIR: Referring to your letters of the 1st and 13th Octo., I have now the pleasure to annex extract from the minutes of a meeting of my directors held yesterday, from which you will see that they have appointed you to the very responsible post of law agent for the company in Portland, Oregon.

"I do not at this time require to enlarge upon the duties
143 required from you in this position, as you already have had some considerable experience of them. It may be well, however, to remind you of what you no doubt have very clearly in view, viz., that in all cases the company has a clear & indisputable first mortgage to the subjects pledged in security, and that the company's business is conducted in accordance with the laws of the State of Oregon, the Territory of Washington, and the United States of America are matters for which you are personally responsible to my directors and the company. Accept my congratulations upon this appointment and believe me to be,

"Yours truly, WILLIAM MACKENZIE, *Sec'y.*"

Together with certain printed rules furnished plaintiff at the time of his appointment, in terms following:

"Attorney-at-law.

"It shall be the duty of the company's attorney or attorneys—

"(A.) To prepare all mortgages, deeds, notes, coupons, and other documents in connection with the company's loans, and to be responsible for their due execution, publication, registration, and validity.

"(B.) To be responsible that all mortgages taken are a clear and undisputed first lien upon the subjects mortgaged, and to grant certificates to that effect.

"(C.) To take charge of and to conduct such proceedings as may from time to time be instituted by the company or in which the company may be interested, subject to such instructions as may issue thereanent.

"(D.) To advise the local board and the directors of any point of
legal or other interest to the company which may be de-
144 veloped or come under his or their notice from time to time by legislative or judicial action or otherwise.

"(E.) And generally to give his or their best attention to all matters connected with the legal department of the company's business and to give such information or advise as may from time — be requested or occur to him or them."

And it being thereupon stipulated and agreed that the plaintiff had become the attorney of the Oregon and Washington Mortgage Savings Bank, Limited, under the same contract which he had with the Oregon and Washington Trust Investment Company, Limited, at the time of his becoming the attorney of said bank, and the plaintiff, having proven the issuance of the certificates sued on and introduced testimony as to the value of the service rendered and responsibility assumed in issuing the same, rested his case.

Whereupon, it being then admitted in open court that Addison C. Gibbs had been the attorney of the Oregon and Washington Trust Investment Company, Limited, prior to the appointment of the plaintiff as such, that plaintiff had been the partner of said Gibbs and had taken his appointment on the same terms as Gibbs had held his, save only as it might be varied by the written resolution, the letter of the secretary, and the printed rules offered in evidence by the plaintiff, the defendant offered in evidence a letter, which it was admitted contained the terms of the appointment of Mr. Gibbs, and which is in terms following:

"DUNDEE, 22*d August*, 1874.

"DEAR SIR: The directors of the Oregon and Washington Trust Investment Company, Limited, have had under consideration a recommendation to appoint you as law agent in and concerning
145 the preparation of mortgages for loans authorized by them in America, and I have now the pleasure of informing you that they have appointed you as law agent on the following footing:

"1. You shall do all work and carry thro' all procedure and see to the execution and registration and publication of deeds requisite and necessary for giving and securing to the company valid and effectual first and preferable mortgages over real estate for such loans as the directors at Dundee may from time to time sanction and authorize.

"2. In the performance of your duties as law agent aforesaid you shall have regard to the amended rules made by the directors, of which a copy is hereunto annexed.

"3. You shall not directly or indirectly take or receive for behoof of the company any commission, bonus, or other benefit from a borrower, and the company shall not *b*ovenant for or accept in respect of any loan anything but the interest conditioned to be paid in and by the mortgage, and which interest shall never exceed what is lawful and right.

"4. You shall not, by yourself or any or either of your partners, be or act as local directors of the company, and you shall not directly or indirectly be interested in any property mortgaged or proposed to be mortgaged to the company, or be in copartnery or joint adventure or otherwise connected with any borrower.

"5. Your professional fees against borrowers, including abstracts,

searches, investigating titles, preparation and recording of mortgages, shall in no case exceed that the laws of the State warrant, and, although the law might warrant and allow more, shall never exceed what follows:

146 "Scale of maximum fees to be charged borrowers by law agent.

"For loans under $2,001, 3½ per cent. (exclusive of travelling and hotel bills); for loans under $4,001 and above $2,000, 3 per cent. (exclusive of ditto); for loans above $4,000 and under $20,000, 2½ per cent. (do., do.).

"6. You shall be responsible to the company for the validity and sufficiency of all mortgages prepared or taken by you.

"7. I commend to your attention a letter which I have to-day written to Mr. Reid defining his duties as manager of the company at Portland, and both you and he will be pleased to understand that that appointment, according to the terms of that letter, and your appointment, according to the terms of this letter, are made upon the footing that the said appointments and the terms thereof are lawful and right according to the laws of the States or countries in which the real estates upon which the company's loans may be made are situated and according to the laws of the United States, and nothing shall be done by you or Mr. Reid, directly or indirectly, either in your own names or for your own behoof or in the name or for behoof of the company, to prejudice or affect or imperil in any way the validity and sufficiency of any mortgage granted or to be granted to the company, or to create or give rise to any claim, penalty, tax, or other exaction or loss to the company.

"8. Your appointment is, of course, at the pleasure of the company.

"Yours faithfully, WALTER BAXTER,
"*Interim Secretary.*

"Addison C. Gibbs, Portland, Oregon."

147 And having introduced other testimony as to the value of the service of issuing the certificates sued on, the defendant closed its case, and no other testimony was offered or introduced by either party as to the contract with the plaintiff and between him and the Oregon and Washington Mortgage Savings Bank, Limited, than that here-n set forth.

Whereupon the court charged the jury as follows:

It appears from the evidence in this case that in 1874 Mr. Gibbs was appointed the attorney of this company, and that shortly after he took Mr. Hughes into copartnership with him. This appointment to the attorneyship of this company is evidenced by a letter which is called the "Baxter letter," and it is claimed by the plaintiff that it constitutes the contract under which he performed this service and measures his duty and the company's liability. Taking that to be the fact, I proceed to consider what the contract as evidenced by this letter amounts to. It may be well to say that in

some respects this contract was varied afterward by the parties. The company reserved the right always to discharge its attorney or change his compensation. There was no permanent employment, and if he did not like the terms he could quit.

The first clause in this letter provides: "You shall do all work and carry through all proceedure and see to the execution and registration and publication of all deeds requisite and necessary for giving and securing to the company valid and effectual first and preferable mortgages over real estates for such loans as the directors at Dundee may from time to time sanction and authorize."

These are the duties which this attorney was to perform. The language is the language of people in a foreign country who are not absolutely familiar with our proceedure and the vocabulary of our courts and laws. The principal duty which the plaintiff was re-
148 quired to attend to was to see that the company got first, valid, and effectual mortgages. This was the duty that he was employed to perform, to see that the company got first and preferable mortgages. Then he was instructed in the third clause that he must take no commission or compensation for the company, that the loan might not be deemed usurious. He was directed that he must not himself nor his partner be a local director in the company nor be directly nor indirectly interested in any property mortgaged or proposed to be mortgaged to the company or be in copartnery or joint adventure or otherwise connected with any borrower. Then comes the fifth clause on which the counsel for plaintiff rests his case: "Your professional fees against borrowers, including abstracts, searches, investigating titles, preparation and recording of mortgages, shall in no case exceed what the laws of the State warrant, and, although the laws might warrant and allow more, shall never exceed what follows." Then follows a schedule of maximum fees.

Then follows the sixth clause: "You shall be responsible to the company for the validity and sufficiency of all the mortgages prepared or taken by you."

Counsel for the plaintiff, as stated, rests his case mainly on this fifth subdivision of this letter or contract and, because it does not contain the words "certificate of title," claim- that, although the plaintiff was bound for his professional fees received from borrowers to make abstracts and searches, he was not required to do the particular thing called giving the certificate of title, and therefore his doing so, as he did it, was something for which he was not compensated.

I think that is a narrow, unreasonable, and unjust construction of this clause and of the whole letter. He had some relations with this company. He had to inform this company in some way that the proposed mortgage was a good or a bad one; that the
149 parties had a good or a bad title, and see that the mortgage was properly executed. He had in some way to say to the company that it had obtained valid and effectual lien as security for its money. How he should do so was not so important as that he should do so.

Some time in 1875—the fall of 1875—Mr. Gibbs went out of this

employment and Mr. Hughes succeeded in the business, Mr. Hughes having himself been Gibbs' partner. He says that he did not know that this letter (Baxter letter) had been received, but claims that the contract between himself and the company was that he was entitled to the same compensation that Mr. Gibbs had received. It seems that in March, 1875, there was a new schedule of fees arranged between Mr. Gibbs and Mr. Reid, the manager of the defendant. A loan of $500 paid $10, and so on. It seems that Mr. Reid took upon himself to perform some of this duty, and claimed one-half of one per cent. of the compensation as his own. Mr. Hughes was dissatisfied. He wrote a letter to the managers of the defendant, whereupon a resolution was passed declaring what his remuneration should be. It is in these words: "Attorney.—That Mr. Hughes, the company's attorney, be remunerated by fees charged to borrowers in terms of scale of March, 1875, and now current. The directors trust that these rates of remuneration, which, along with the relative appointment, are to continue during their pleasure, will be satisfactory to all concerned." This was received by the plaintiff and acted upon by him.

It is a part of the contract between the parties, the alteration of the contract made by the parties to it. In my judgment the plaintiff was to be fully compensated for all the services he performed in and about the mortgages taken by the defendant by the prescribed fees received from the borrowers. Now, it is not necessary to determine what is the effect of this certificate, but something must be said about it. By way of magnifying the value of his service, the plaintiff claims that it is an absolute warranty; that this young man under-
150 took to guaranty absolutely the validity of the security for this million and a half of money. It might be a question what the security is worth. His guaranty as a lawyer is all that I think he put into it. It reads that he certifies that the title to the property at the date of the record is absolute, in fee simple. In a majority of instances there is no question about the title; the record contains the evidence. He does not warrant it beyond the statement that the title is good according to the record of the deeds, and he is only responsible for ordinary skill and ability in that respect. For instance, there might be an error with the registry. The clerk may have recorded the mortgage under the head of deeds. The purport and effect of this certificate is simply this: The plaintiff certifies to this conclusion, that the title to this property, as it appears by the record, is good. There is no extraordinary responsibility assumed by Mr. Hughes at all. My conclusion is, then, that the plaintiff undertook to do this duty. It became necessary to inform the company in some way agreed upon between them that a mortgage was a valid security for a loan; that the title was good, and the mode of doing so was a matter of agreement between them. He simply gave his judgment to them, and this as a necessary part of his duty, and therefore he is not entitled to recover any additional compensation for these services.

On this conclusion, of course, your verdict must be for the defendant. I am asked by counsel for plaintiff to submit a question

to you specially, one which I had thought of before and now submit to you. I want you to say specially what these services were worth, if anything, over and above what the plaintiff received from the borrowers. It appears from his own statement that he received $30,000 from the borrowers. Taking all the circumstances into consideration, you will find specially whether the services rendered by the plaintiff was worth more than what he received from the borrowers or not, and, if more, how much.

151 To which charge the plaintiff at the time excepted as follows:

To the construction of the contract made between him and the Oregon and Washington Mortgage Savings Bank, Limited, by the writings offered in evidence, given by the court and the instruction that under the same he was bound to issue the certificates sued on for the fees received by him from borrowers, and that the jury should find for the defendant.

To the instruction given by the court for a special finding as to the value of the service of issuing the certificates, in that the plaintiff asked for a special finding as independent of any payment, the claim of the plaintiff being that no payment whatever had been made thereon, and that the fees collected from borrowers were to pay for other services and in no part or manner to apply as pay for the certificates.

Inasmuch as the said several matters so given in evidence and in the instructions to the jury so by the plaintiff excepted and objected to as aforesaid do not appear by the record of the verdict in this cause, and the plaintiff did then and there propose his aforesaid objections and exceptions to the opinion of the judge and ask him to put his seal to this bill of exceptions containing the several matters excepted and objected to, I, Matthew P. Deady, judge of the above-entitled court and the judge before whom said cause was tried, at the request of the party objecting, have signed and put my seal to this bill of exceptions on this the 28th day of February, 1887.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Endorsed: Filed Feb. 28, 1887. R. H. Lamson, clerk.

152 And afterwards, to wit, on the 28th day of December, 1886, there was duly filed in said court a bond in words and figures as follows, to wit:

153 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
vs.
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1066.

Know all men by these presents that we, Ellis G. Hughes, J. W. Kern, and P. W. Gillette, are held and firmly bound unto The

Dundee Mortgage and Trust Investment Company, Limited, in the sum of two hundred & fifty dollars, to be paid to the said Dundee Mortgage and Trust Investment Company, Limited, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated December 18, 1886.

Whereas the above-named Ellis G. Hughes has taken a writ of error — the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the circuit court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named Ellis G. Hughes shall prosecute said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

ELLIS G. HUGHES. [L. S.]
J. W. KERN. [L. S.]
P. W. GILLETTE. [L. S.]

Signed, sealed, and delivered in presence of—
HENRY WAGNER.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, J. W. Kern, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and freeholder within said district, and that I am worth in property situated therein the sum of two hundred & fifty dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

J. W. KERN.

Subscribed and sworn to before me this Dec. 18, 1886.

HENRY WAGNER,
Notary Public for Oregon.

[SEAL.]

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, —— ——, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and freeholder within said district, and that I am worth in property situated therein the sum of two hundred & fifty dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

P. W. GILLETTE.

Subscribed and sworn to before me this Dec. 27, 1886.

HENRY WAGNER,
Notary Public for Oregon.

[SEAL.]

Approved.
DEADY, *J.*

[Endorsed:] No. —. U. S. circuit court, district of Oregon. —— —— *vs.* —— ——. Bond. Filed Dec. 28, 1886. R. H. Lamson, clerk, by —— ——, deputy clerk.

154 In the Circuit Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, *District of Oregon,* } *ss:*

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify that the foregoing is a true copy of the record and of all proceedings, including the opinions of the court, in the cause entitled Ellis G. Hughes *vs.* The Dundee Mortgage and Trust Investment Company, Limited, in said court determined.

Witness my hand and the seal of said court, at Portland, in said district, this September 23, 1887.

[Seal United States Circuit Court, Oregon.]

R. H. LAMSON, *Clerk.*

155 DISTRICT OF OREGON, *ss:*

I certify that on the 10th day of February, 1888, at Portland, Multnomah county, in said district, I duly served the within "statement of error," etc., upon the therein-named The Dundee Mortgage and Trust Investment Company, Limited, by delivering to E. C. Bronaugh, of the firm of Whalley, Bronaugh and Northup, attorneys for the said company, personally a true copy of said "statement of error," etc., duly certified to by me as U. S. marshal.

JOHN MYERS,
United States Marshal,
By CHAS. N. WAIT, *Deputy.*

156 In the Supreme Court of the United States.

ELLIS G. HUGHES, Plaintiff in Error,
vs.
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1316.

Error to the circuit court of the United States for the district of Oregon.

The defendant in error above named is hereby notified that, pursuant to the rule declared March 28, 1887, by the Supreme Court regulating the printing of records and transcripts in that court in the above-entitled cause, the plaintiff in error will rely upon the following errors in the record, to wit:

1. The court below erred at the trial of said cause in instructing the jury that, under the contract contained in the letters and other writings introduced by both parties as containing and constituting

the contract under which the plaintiff issued the certificates sued on and which writings are set out in the bill of exceptions, the plaintiff was bound to issue such certificates for the fees received by him from borrowers, and that the jury should find for the defendant; to which instruction the plaintiff duly excepted, and the exception was allowed.

2. The court below erred at the trial of said cause in instructing the jury to make a special finding as to the value of the service of plaintiff in issuing said certificates of title over and above the fees received from borrowers, there being no such question in the case under either the pleadings or evidence; to which instruction the plaintiff in error duly excepted, and the exception was allowed.

157 The defendant will further take notice that the plaintiff in error proposes to print and so designates the following portions of the record as sufficient to present the error relied on in this cause, to wit:

1. The complaint; 2, the last amended answer; 3, the reply to the last amended answer; 4, the bill of exceptions; 5, the final judgment entry.

J. N. DOLPH,
Counsel for Plaintiff in Error.

158 [Endorsed:] In the Supreme Court of the United States. 1887, October term. No. 307. Ellis G. Hughes, plaintiff in error, *vs.* The Dundee Mortgage and Trust Investment Company, Limited. No. 1316. Statement of error and designation by pl'ff in err. of portions of the record to be printed. J. N. Dolph, counsel for plaintiff in error.

[Stamped:] Office Supreme Court U.S. Filed Feb. 21, 1888. James H. McKenney, clerk.

Endorsed on cover: Oregon C. C. U. S. No. 307. Ellis G. Hughes, plaintiff in error, *vs.* The Dundee Mortgage and Trust Investment Company, Limited. Filed November 28, 1887.